

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : **ORPHANS' COURT DIVISION**
:
E. W., JR. : **NO. 6145**
: **INVOLUNTARY TERMINATION OF**
MINOR CHILD : **PARENTAL RIGHTS**

IN RE: : **ORPHANS' COURT DIVISION**
:
M. A. : **NO. 6142**
: **INVOLUNTARY TERMINATION OF**
MINOR CHILD : **PARENTAL RIGHTS**

OPINION AND ORDER

The Court heard testimony on this termination case on May 7, 2009, June 11, 2009, August 27, 2009, August 28, 2009, September 10, 2009, September 18, 2009 and October 9, 2009.

The Petition as to the child, E. W., Jr. was filed on or about February 18, 2009. The Petition for the child, M. A. was filed on or about February 18, 2009. E. W., Jr. was born on March 2, 1999. He is 10 years old. M.A. was born on October 13, 2005. M.A. just turned 4 years old in October 2009.

M. B. is the natural mother of E. W., Jr. and M. A. E. W., Sr., is the natural father of E. W., Jr. He currently lives in the Scranton area. S. A. is the natural father of M. A. He currently lives in the State of Georgia. The Agency is seeking to terminate all the parents' parental rights with the goal of adoption of the two children. All the natural parents are opposed to termination.

UNDERLYING FACTS IN CASE OF E. W., JR. AGE 10

On October 11, 2005, the Children & Youth Agency of Lycoming County (hereinafter referred to as the “Agency”) filed a dependency petition concerning E.W., Jr. The Court, in case No. JV 327-05, held a dependency hearing on November 8, 2005. The primary concern for E. W., Jr. was his truancy from school. He was then in the first grade at Cochran Elementary School. Out of 45 school days in the 2005-2006 school year before the November 5th hearing, E.W., Jr. had 20 unexcused absences and three excused absences. *See*, Agency Elliot Ex. 1a. The Court, by Master Diane Turner, adjudicated E.W., Jr. dependent finding he was without proper parental care or control. E.W., Jr. remained in the home of Mother.

On February 24, 2006, a permanency review hearing was held at 10:00 a.m. E.W., Sr. was in McKean Federal Prison at the time. Mother’s whereabouts were unknown. However, Mother appeared that afternoon claiming she was not aware the hearing was scheduled for 10:00 a.m.

Since the November 8, 2005, dependency finding E.W., Jr. had had 22 unexcused absences from school, 8-1/2 excused absences and had been present in school for 32 1/2 days of the 62 school days. Testimony noted that Mother had been convicted of drug delivery offenses and that after a parole violation served a term of 1-3 years in the Muncy State Correctional Institution. E.W., Jr. had been born with cocaine in his system. A CASA worker (court appointed special advocate) testified she had seen E.W., Jr. on the street without supervision and Mother had told her she intended to “run” to the State of Georgia and that she had “done it before.” *See*, Agency Ex. 2a, the Permanency Order of February 26, 2005. The Court, by Master Diane Turner, reaffirmed the finding of dependency and removed E.W., Jr.

from Mother's home to be placed in an approved resource home. The court ordered Mother to undergo a psychological evaluation as well as a drug and alcohol evaluation. She was also made subject to random urinalysis screening during visitation with the child. *See*, Agency Ex. 2a.

The case was next heard on July 21, 2006 for a permanency review hearing. The evidence revealed Mother had been homeless since April 28, 2006, when she had a fire at her home. She had been scheduled for three psychological evaluations and she cancelled each time. She also missed a scheduled drug and alcohol assessment. *See*, Agency Ex. 3a. With agreement of the parties E. W., Jr. was placed by the Agency in the kinship home of Denise and Anthony S. Mother to this time had refused drug testing and the Court ordered that she submit to drug testing prior to visiting with E. W. Jr..

On January 17, 2007, the Agency filed a petition for Emergency Custody of E.W., Jr. Mother had taken E.W., Jr. out of the kinship home placement in January 2007 and she was staying with a sister, A.B., in Lackawanna County. *See*, Agency Ex. 4a. A.B. at the time had an open case with Lackawanna County Children and Youth. Apparently, just prior to this time, E.W., Jr. had been staying in the kinship home of his Aunt, Michelle B. Michelle B. was not fully cooperative with the requirements of the informal kinship arrangement. Mother remained homeless and uncooperative with Court-ordered drug testing. Mother, by this time, also had given birth to M. A. on October 13, 2005. Father remained incarcerated.

By Court Order of January 19, 2007, Judge Richard Gray granted the Agency emergency custody of E.W., Jr. ordering he be placed in an approved foster home. *See*, Agency Ex. 4B.

A dependency hearing was held on April 5, 2007. Judge Dudley Anderson found Mother to have a severe substance abuse problem. Mother failed to appear for the April 5, 2007, hearing. Judge Anderson confirmed placement of E.W., Jr. with the Agency. The Court indicated Mother could visit with E.W., Jr. with supervised visitation. *See* the Order of April 5, 2007, Agency Ex. 4D.

On June 12, 2007, a permanency hearing was held by a Family Court Master, Jocelyn Hartley. Father remained incarcerated. Mother was residing in Lackawanna County and reported she was scheduled for a psychological evaluation with Scranton Counseling Association on June 19, 2007. She also reported involvement with drug and alcohol counseling in Lackawanna County. Mother was granted supervised visitation with E.W., Jr. at the Sharwell Building, the office of the Agency. Dependency was affirmed and E.W., Jr. remained in foster care. *See*, Agency Ex. 5a.

On November 9, 2007, the Court held a permanency review hearing. E.W., Jr. was doing well in foster placement and Mother was exercising supervised visitation at the Sharwell Building. She had been homeless but she recently moved in with her mother in South Williamsport. The Court, in its Order of November 9, 2007, in a hearing held by the undersigned characterized Mother's progress as "stagnant." It was noted that the Agency offered her housing at Liberty House, a drug and alcohol treatment facility but she turned down this offer. Mother had appeared for a psychological evaluation by Bruce Anderson. She was to begin drug and alcohol counseling with Crossroads Counseling. The Court encouraged her to follow through with plans for employment. Father remained incarcerated in the Federal Correctional system. *See*, Agency Ex. 6a.

Mother did not make any significant progress in her efforts to resume custody of E.W., Jr. On April 8, 2008, a permanency review hearing was held before Judge Dudley Anderson. The younger child, M.A. had been in a foster home since September 2007. Judge Anderson, in his Order of April 8, 2008, Agency Ex. 7a, found that Mother's progress in the case "has been unacceptable." He noted she still labored with drug and alcohol issues, had not obtained stable housing, and had no employment. He noted she had no visible means of support "and her prospect for caring for these children is remote at best."

Judge Anderson noted Father, E.W., Sr., has spent a good part of his life as an incarcerated individual. He was presently serving a sentence in the Leavenworth, Kansas, Federal Penitentiary. Mother did not appear for the April 8, 2008 proceeding. S.A., Father of M.A., also failed to appear.

In his Order of April 8, 2008, Judge Anderson discussed placing the children in some form of kinship placement. Judge Anderson noted that the Agency had not moved for termination of Father's rights at this time because he was continuing to correspond with E.W., Jr. while he was incarcerated at the Leavenworth institution. Judge Anderson expressed concern that E.W., Jr. was languishing in foster care for an extended period of time. Judge Anderson did not feel this was serving the best interest of E.W., Jr. Judge Anderson noted that when the case next comes up for its six-month review and if there has not been progress by either the Mother or Father, it is unlikely that the Court would look at reunification as the goal of the case. *See*, Agency Ex. 7a.

Judge Anderson held a permanency review hearing on September 3, 2008. *See*, Agency Ex. 8. Judge Anderson noted Mother lost complete contact with the Agency. She was

not present for the hearing. She had not visited with either E.W., Jr. or M.A. for a period of six months. There was also a Bench Warrant which had been entered for her arrest at that time.

Judge Anderson noted that E.W., Sr. has maintained contact with the Agency but that he has been in prison the last six years. At the time he had not seen E.W., Jr. since E.W., Jr. was 3 years old. Judge Anderson discussed in his Order the fact that the Agency was asking the Court for a finding of compelling reasons to maintain the goal of reunification of E.W., Jr. and M.A. with their respective fathers. Judge Anderson noted he did not share the Agency's enthusiasm with regard to the planned reunification of the boys with their fathers. He noted neither father has been in or visited with the boys in Lycoming County during the history of the Agency's involvement with the boys. Judge Anderson noted,

. . . the Court is concerned about the ability of these gentlemen under these circumstances to assume custody and responsibility of E.W., Jr. and M.A. It seems to the undersigned that to displace the boys from their present home in the name of biology is risky at best.

Judge Anderson with some hesitation then granted the Agency's request for a finding of compelling circumstances to delay termination at least for a period of 90 days. *See*, Agency Ex. 8A.

Pursuant to Judge Anderson's Order of September 3, 2008, a review hearing was held on December 3, 2008. *See*, Agency Ex. 9A. Mother's whereabouts were still unknown at this time. E.W., Sr., had been transferred from Leavenworth Federal Prison to a drug halfway house in Harrisburg, PA. S.A., father of M.A., at this time was in compliance with requirements of the Interstate Compact. He was still in the State of Georgia. M.A. was doing extremely well in his foster home. E.W., Jr. was struggling with the uncertainty of his future. It is reported in

the Family Service Plan, Agency Ex. 9b, under the Caption “concerns” are that E.W., Jr. after a visit with his Father in Harrisburg showed deterioration in his behavior and attitude.¹

Finally, the Agency, on or about February 18, 2009, filed their Petition for Involuntary Termination of Parental Rights as to Mother and E.W., Sr. in regard to E.W., Jr. and to Mother and S.A. in regard to M.A.

The Court hereby adopts the facts submitted by the Agency in their Petition for Involuntary Termination of Parental Rights in regard to the child, E.W., Jr., specifically averments 8A-Z.

Underlying Facts in Case of M.A., Age 4 (as of October 13, 2009)

M.A. was born on October 13, 2005 to M.B. and S.A.. Mother was residing in Lycoming County at this time and as previously stated on October 11, 2005 the Agency filed a dependency petition concerning the child, E.W. because of his continued truancy at school. E.W. was initially allowed to remain in Mother’s home. Finally, by February 26, 2006, E.W. was removed from Mother’s home to be placed in an approved resource home. Mother then became homeless and was required to submit to drug testing before visiting with E.W. E.W. was then placed in a Kinship placement and Mother still refused to cooperate with drug testing. Mother then took E.W. out of the Kinship home without the Agency’s permission, and took E.W. to a sister’s home in Lackawanna County in January 2007.

The Juvenile Master’s Report contained in M.A. Exhibit 1B, reports the events in 2007.

¹ In November 2008, Father E.W., Sr., subsequently committed infractions of the halfway house and was returned to Leavenworth Federal Penitentiary.

Rebecca Bednarz of Lackawanna County Children & Youth was Mother's caseworker. Ms. Bednarz provided voluntary services to Mother which she described as being less than successful. Mother was scheduled to meet with her on a weekly basis but Mother would fail to appear two to three weeks at a time. Mother failed to appear for appointments for mental health and drug and alcohol evaluations. In light of this Ms. Bednarz decided to seek a dependency finding for M.A. in Lackawanna County.²

As of June 5, 2007 Lackawanna County C&Y had no information concerning Mother's whereabouts. Ms. Bednarz contacted Lycoming County C&Y providing them with possible addresses for Mother in Lycoming County.

Lycoming County discovered Mother had briefly moved in with her mother and the children's grandmother but that she was to leave that residence on August 1, 2007. Melissa Dangle, an Agency caseworker in Lycoming County, discovered that Mother was at the Salvation Army claiming to be homeless. Ms. Dangle found Mother at the Salvation Army but when she approached Mother, Mother refused assistance and drove away with the child and another individual. Ms. Dangle obtained an emergency custody order for M.A.³

M.A. has been in placement by the Agency since the emergency custody order of September 14, 2007.

² It appears to the Court that in this timeframe Mother effectively avoided Agency efforts in both Lycoming and Lackawanna Counties by constantly disappearing and moving between the counties. She did not cooperate with either C&Y Agencies.

³ All this information is taken from Agency M.A.'s Ex's 1A and 1B. The emergency custody order was signed by the Court on September 14, 2007, by Judge Dudley Anderson. Mother continued with her lack of cooperation. Beyond taking E.W. out of a Kinship placement and fleeing to Lackawanna County she provided no information on her whereabouts after ending her relationship with Lackawanna C&Y. *See*, Juvenile Master's Report, Ex. 1B (M.A.). Mother's lack of cooperation is detailed in the Juvenile Master's Report of September 18, 2007. Agency M.A., Ex. 1B, Report of Master Diane Turner.

When a dependency hearing was scheduled on September 30, 2007, Mother objected to a master hearing the matter, and she demanded the matter be heard by a Common Pleas Judge. *See*, Agency Ex. M.A. 1C.

The hearing was rescheduled in front of the undersigned on November 9, 2007. The Court on this date, without objection of the parties, found M.A. to be a dependent child. The court noted Mother's homelessness. She had no stable housing for a long period of time. She turned down a placement offered with Liberty House for drug treatment. Mother could have supervised visitation at the Agency office, the Sharwell Building. The Court arranged for S.A., who was in Georgia, to participate in the November 9th hearing by telephone but he was not present at the telephone number provided to the Court. The Agency was doing an evaluation of S.A.'s mother's home in Georgia as a resource for M.A. under the Interstate Compact Act. In its Order, the Court also clearly set out things Mother would need to do in regard to housing, employment and counseling for M.A. to resume living with her. The Family Service Plan also covered Mother's obligations. (Note: All this information is contained in Agency, M.A., Ex. 1e, and this Court's Order of November 9, 2007.)

The case was next reviewed by the Honorable Dudley Anderson on April 8, 2008. *See*, Agency M.A., Ex. 2a. Both E.W. and M.A. had now been in placement for a significant period of time (since February 2006 for E.W., since September 2007 for M.A.). None of the parents appeared for the case review. (E.W., Sr. was incarcerated.)

Judge Anderson next reviewed the case on September 3, 2008. He noted that Mother lost contact with the Agency. She had not visited with either of the children for at least 6 months. *See* Agency M.A., Ex. 3a, Judge Anderson's Order of September 3, 2008. While Judge

Anderson noted that the Agency was working with the Interstate Compact Act in regard to S.A., the Judge also noted that M.A. was age 3 and had never met with S.A. Judge Anderson discussed the fact that the Agency at this time still maintained the goal of reunification of both E.W. and M.A. with their respective fathers. However, Judge Anderson expressed reservations about this goal noting that E.W. had been in placement since February 2006 and M.A. had been in a foster home for a year.

Mother continued with her basic noncompliance with counseling efforts. She was referred to White Deer Run for partial hospitalization on October 18, 2007. *See* Agency, M.A., Ex. 9. She then declined this admission. *See*, Agency M.A., Ex. 10.

On April 18, 2008, the Agency wrote a letter to S.A. encouraging him to arrange visitation with M.A. He was advised he had a right to visit with the child at least once every two weeks. *See*, Agency, M.A., Ex. 11o. S.A. did not arrange any visitation with M.A.

M.A. was placed in a foster home with Melissa Harris in October 2008. He was age 3 at the time. M.A. and Ms. Harris live in Williamsport. Ms. Harris testified on June 11, 2009. M.A. is clearly thriving in her care. She would like to adopt him. M.A. has a slight speech delay, but he is getting therapy. He is now in preschool. M.A. refers to Ms. Harris as "Mommy." She described M.A. as a typical 3-year old. He is very active and loves to do things with her. She notes that after M.A.'s visits with Mother his behavior reverts to wetting his pants and sucking his thumb. He also becomes physically aggressive, hitting or biting other children.

She testified that S.A. only visited with M.A. once on March 6, 2009, when S.A. appeared at the pretrial conference for this termination proceeding. The child calls Mother by

her first name. He makes no reference to his natural father. The child does not ask about or speak of Mother.

Mother did give M.A. an Easter basket, but neither parent has given him Christmas or birthday presents.

It is obvious to the Court that the Foster mother is well bonded to M.A. and M.A. is bonded to her as his mother figure.

Additional Testimony Presented to the Court at the Termination Hearings

Edward Frame has been the Agency caseworker for E.W. and M.A. since July 2008. The Agency filed the termination petition in February 2009. Although Mother eventually complied with a drug and alcohol evaluation and a psychological evaluation, she has been generally unresponsive to his efforts. He has made efforts to contact her, but she does not respond. She has disappeared for periods of time. He did manage to find her at the residence of 630 Cherry Street in Williamsport in April 2009. She has not taken parenting classes offered by the Agency.

She gave birth to a new baby in April 2009 who tested positive for cocaine. Mother also admitted to Mr. Frame that she smoked marijuana prior to going into labor with the new baby. She has not participated in drug and alcohol counseling in the timeframe 6 months prior to his filing for termination of parental rights in February 2009. She did claim to Mr. Frame that she started drug and alcohol counseling in April 2009. She still has no employment. She did not visit with the children in the timeframe of August 2008 until the filing of the termination petition in February 2009. She has not paid timely child support. Mr. Frame characterized Mother as being non-cooperative.

E.W., now age 10, has been in a number of foster homes and also kinship placement. The Court is concerned that he has languished in the foster care system. At times he has acted out in foster homes and this has caused him to be moved out of some of the foster placements.

He does well academically in school. He has some problems with peer interactions in school. He is in the fourth grade.

Mr. Frame opined that E.W. is adoptable. Mr. Frame described him as bright and pleasurable. He responds to structure. He loves athletics.

Father, E.W., Sr., has been in the Leavenworth Federal Penitentiary until recently. He was released on August 5, 2009. He has been incarcerated most of E.W.'s life. In October 2008 Father was placed in the halfway house in Harrisburg. Mr. Frame arranged a 2-hour visitation of E.W. with his father in Harrisburg.⁴ Father violated rules of the halfway house and was sent back to Leavenworth on November 17, 2008 until his recent release from prison on August 5, 2009.

While in prison, Father wrote monthly letters to his son. He has maintained interest in his son during his incarceration. He attended a proud father's group while in Harrisburg.

M.A.'s father has resided in Georgia since the M.A.'s birth. He has indicated his interest in the child but has not sent cards or gifts. He has cooperated in establishing payment of child support.

⁴ Mr. Frame testified that the visit went well. However, he noticed E.W.'s behavior regressed after the visit.

Mr. Frame has made an Interstate Compact referral to the State of Georgia to evaluate any home S.A. could provide for M.A. However, Mr. Frame testified that S.A. has not adequately followed through with the Interstate process. He does not consider S.A. to be a resource for the child at this time. The lack of follow through lead to a denial of the Interstate referral process on January 12, 2009. Mr. Frame did talk to S.A. about this and S.A. told him he would contact Mr. Frame with a further resource, his Mother. Mr. Frame did talk with S.A. about the Family Service Plan.

S.A. has not attended any review hearings for M.A., but he did attend the pretrial conference on the termination petition. Mr. Frame set up a visitation for S.A. with M.A. after the pretrial conference. This was S.A.'s only contact with the child.

Mr. Frame had informed S.A. that they would facilitate him coming to Pennsylvania to visit with the child. S.A. did not respond to this offer up to the time of his appearance at the pretrial conference. He has not since visited with the child.

S.A. moved out of his listed residence to reside with his Mother. Mr. Frame believed this move caused the Interstate process to be denied. Mr. Frame also noted that S.A. delayed the process by rescheduling the home study and then moving and rescheduling the fingerprint requirement.

Mr. Frame has updated S.A. monthly as to M.A.'s progress by letter or telephone. He testified S.A. has not been cooperative with the Agency and he feels S.A. has no connection with M.A.

Kary Kane, an adoption caseworker with Laurel Youth Services, provided testimony to the Court at the August 27, 2009 hearing. She is working with a pre-adoptive family interested in adopting E.W. E.W. has met with this family two times.

August 11, 2009 was the first visit. E.W. met the potential Father and Mother at a restaurant. E.W. was nervous but the visit went well.

A second visit occurred on August 25, 2009 at the home of the potential parents. This family has three young children, ages 8, 6 and 6 weeks, and the children gave E.W. a tour of the house and then played with him in the yard. The children seemed to get along very well.

At this time E.W. seems very interested in this family and the family seems very interested in E.W. The family has been informed of E.W.'s background and also about some of his problems and negative behavior in foster care.

Laurel Youth Services is a non-profit agency which does foster and adoptive services. Ms. Kane feels E.W. is adoptable. She feels the family in question has a lot of strengths to offer E.W.

Colleen Lewis, a caseworker for Laurel Youth Services, testified she is E.W.'s caseworker for Laurel Youth Services. She has been his caseworker for 4-5 weeks. She describes him as being an "amazing" young man. She acknowledges E.W. has had ups and downs in foster homes. E.W. has some anger issues. He is very sports oriented. E.W. came in the Laurel Youth Services specialized foster care program on April 3, 2009. When he acts out in a foster home he is placed in a second respite home for a cooling off period. He is currently in the Leahy foster home and he has just returned to school. Prior he was in the Ortes' foster home,

but they asked that he be removed on July 13, 2009. He is now in the Canton School District, and the witness described him as being very bright.

Ms. Lewis believes E.W. is confused over the termination hearing. He has concerns about not seeing his parents in the future. He is currently receiving anger management counseling and grief counseling. The grief counseling is for his stress over the termination proceeding. Laurel Youth is helping E.W. deal with the difficult emotions he is now experiencing. He is currently doing well in the Leahy foster home. At this time the prospective adoptive family for E.W. is still very interested in E.W. All information as to E.W.'s behaviors will be provided to potential foster families. Laurel Youth has informed the family currently interested in E.W. that he has been verbally difficult at times and that there have been occasions of aggression toward younger children and caretakers.

Heather Wood, an Agency caseworker, supervises visitation at the Sharwell building. Mother did not visit with the children since August 2008. She started visits again at the time of the March 2009 pretrial on this termination petition. When S.A. and Mother visited with M.A. at the time of the March 2009 pretrial, the child did not seem to know Mother, S.A or the maternal grandmother who was also present. S.A. had limited interaction with the child. The witness testified that mother seemed to inappropriately question M.A. at the recent visits. Mother accuses the supervisors of eavesdropping on her conversations. S.A. has never contacted Ms. Wood to arrange a visit. M.A. is uncomfortable at the visits and does not want the foster mother to leave him. The two children, M.A. and E.W., have been visiting with each other every other week.

Psychologist Bruce Anderson testified on June 11, 2009. He evaluated E.W. on December 18, 2008 and March 19, 2009. He noted E.W.'s father has been incarcerated 7 out of 10 years of the child's life.

E.W. has had some difficulties in foster homes accepting direction, particularly with female authority figures.

E.W. does feel bonded both to his Mother, and E.W., Sr. He feels some degree of sadness because he misses his father and has been disappointed with his mother. Counseling is helping to stabilize him. He has some ongoing feelings of abandonment and sadness and he struggles with these feelings.

Mr. Anderson met with E.W. on March 19, 2009 to assess his reaction to the possible termination of parental rights. Mr. Anderson described E.W.'s bond with his father as being more in his mind than real because his father has been in jail for most of E.W.'s life. He does not see this as any actual bond.

Mr. Anderson feels if parental rights are terminated E.W. would feel some sadness and even anger but that he would be able to work through these feelings, because he has been without his parents most of his life.

Mr. Anderson opined that E.W. is at a point in his life where he needs stability now. He feels E.W. is resilient and that he can get through these feelings with appropriate counseling. Mr. Anderson describes E.W. as being on the "cusp." While E.W. has loyalty to his natural family he needs a permanent and safe home. Mr. Anderson opined that E.W. is adoptable. He described E.W. as being good looking and bright.

Mr. Anderson opined that E.W. has an emotional bond with Mother and that he loves Mother. He believes some of his problems in foster homes are because he sees the foster parents being in direct competition with Mother. Mr. Anderson believes E.W. would have the ability to bond with adoptive parents. He believes Mother has proven to be unstable and that E.W. immediately needs stability in his life.

Mr. Anderson opined that deferring a decision on termination to give father time to establish stability since he is now out of Federal Prison would leave the child in limbo. This would prolong the difficult place E.W. is in now. Mr. Anderson believes that even if Father did well upon coming out of prison it would take a year to regain stability.

Mr. Anderson testified that he did an evaluation of Mother on July 12, 2007. Agency, E.W. Ex. 12. She was open about her history of drug use. She has been dependent on cocaine. She was age 27 at the time of the evaluation and began using drugs at age 12. She claimed at the time of the evaluation she was not using drugs any more. Mr. Anderson believes that if Mother has not gotten her life together by this time in 2009, more than two years after his evaluation, that the Court should consider termination to give E.W. stability in his life.

The Agency also called Dixie Haldeman, a supervised visitation coordinator, as a witness on June 11, 2009. Ms. Haldeman described Mother's visits with the children as chaotic. At the visits Mother pays most of her attention to E.W., not M.A. On the June 4, 2009 visit Ms. Haldeman asked Mother to provide a urine sample for drug screening. Mother refused to do this and said this would have to go through her attorney. E.W. seems glad to see Mother come to a visit. M.A. seems reluctant to have the visit.

Presentation on Behalf of Mother M.B.

Mother testified on August 27, 2009. She now lives with a boyfriend, G.W., who she has just had a son with in April 2009.

Mother admits since August 2008 she has been back and forth between Lycoming County and Scranton. The reason she has moved around has been because of warrants for her arrest. She has now satisfied the warrants and brought her court costs up to date. She believes she can provide a home for her children. She feels very bonded with both children. She acknowledges she has been wrong for running between counties.

G.W. pays the rent for her apartment. Although there was a prior notice of eviction when G.W. was not working, this has been worked out.

Mother admits she did not see the children from September 2008 until January 2009. She has had no drug and alcohol counseling since August 2008. Mother believes in the next 3-6 months she can establish stability to take her children back to live with her.

Mother acknowledges she only has custody of one of her five children, the baby born in April 2009. She has a Domestic Relations hearing where she is charged with contempt for failure to pay child support scheduled for September 22, 2009. Her only parenting classes occurred while she was an inmate at the Muncy State Correctional Institution.

While the Court felt Mother was sincere in her love for her children, the Court does not feel she has made any progress in stabilizing her lifestyle. She has used drugs as recently as the timeframe of the birth of her new baby. Apparently the new baby had traces of cocaine in his system according to the testimony of Mr. Frame. When the Court asked Mother

about this she exercised her Fifth Amendment rights. Mother acknowledged she has not cooperated with the Agency, and she excuses that by saying “she doesn’t trust them.”

Presentation on Behalf of Father, S.A.

S.A. testified on August 27, 2009 and September 10, 2009. He was physically present for the hearing dates of May 7 and June 11, 2009 but he could not appear in Pennsylvania on August 27, September 10, 2009, September 18, 2009 and October 9, 2009, so the Court permitted him to participate in the case by telephone from his home in Georgia.

S.A. is age 27. He grew up in Chicago and moved to Georgia with his mother around 1998-1999. His father is of Nigerian origin but he has no contact with him.

S.A. met Mother in Georgia when she went to Georgia with E.W., Sr.

Mother left Georgia shortly before giving birth to M.A. S.A. was aware of the birth of M.A. on October 13, 2005. Mother had returned to Lycoming County where M.A. was born. S.A. did not come to Pennsylvania for the child’s birth nor did he come to Pennsylvania thereafter. He did not pay child support although S.A. testified he sent clothes and things to Mother.

At some point S.A. lost contact with Mother when she started to move around. When asked why he did not come to Pennsylvania, S.A. said he initially thought Mother would come back to him when he got himself financially situated. S.A. also testified that he wanted to establish himself in regard to employment and his home situation before he would do anything in regard to M.A.

He lost contact with Mother. Despite this, he did not come to Pennsylvania to do anything about it. From M.A.’s birth on October 13, 2005 until M.A. was placed with the

Agency via emergency custody on September 14, 2007, S.A. had no contact with M.A., nor had he ever met M.A.

S.A. lives in Georgia with his Mother. He has two children from another woman living with him, a six-year old son and a one-year old daughter. The two children live with him and his mother.

Since placement of M.A. the Agency has obtained a child support order against S.A., and he has been paying child support.

S.A. has had employment through a temporary job agency. However, he has recently obtained permanent employment with DISH Network at their warehouse in Georgia as a receiving supervisor.

S.A. plans to move out of the apartment with his mother, and he claims he will be going into a three-bedroom apartment on the same block in which his mother lives. He plans to take his two children with him, and he feels he could take in and support M.A. if the Court would give him custody of M.A.

Some of S.A.'s testimony was difficult to discern. He testified his grandmother babysits his young daughter when he works. He also testified his mother is employed as an R.N. His testimony seemed unclear about the grade of school his son was in, whether it is kindergarten or first grade.

S.A. has not sent M.A. cards, Christmas presents or birthday presents. When asked if he has a plan on how to reunite with M.A., he answered that he first had to get him back. S.A. seemed offended when the Agency suggested he take parenting classes because he already has two children.

The Agency has sent reports on M.A.'s progress to S.A. every two weeks.

S.A. has not appeared at court review hearings over the years. The Agency has offered him visitation and financial assistance to visit with M.A., but he has not availed himself of such opportunity until the pretrial conference on the termination petition held in March 2009. S.A. did appear for that conference and the Agency arranged for him and Mother to have a supervised visit with M.A. at the Sharwell building. That supervised visit is the only time S.A. has seen M.A. There is obviously no bond between S.A. and M.A.

The Agency has initiated an interstate process to help determine whether S.A. can be a resource for M.A. Agency counselor, Ed Frame testified that S.A. has not fully cooperated with this process in Georgia. Because of this, the interstate process and referral was denied on January 12, 2009. Mr. Frame further testified that when S.A. moved into his mother's apartment, this caused the home study to stay because S.A. had changed his address.

When S.A. moved in with his mother, the Gwinnett County Georgia Department of Family and Children Services started the process of a home study of S.A.'s mother's home. This home study process was not completed but it would not be important at this time because S.A. is moving into his own apartment.⁵

S.A. contends that he is ready, willing and able to take custody of M.A. Thus, he is opposed to termination of his parental rights to M.A.

⁵ The Agency contends M.A. did not cooperate with the process. The Guardian Ad Litem offered into evidence a letter from the local children and youth agency in Georgia to the Georgia Interstate Compact. Guardian, Ex. 1. The letter claims Mrs. A. declined to do the home study. S.A. objects to the exhibit as hearsay and contends his mother is willing to cooperate with the process. The Court does not see this as an important issue as S.A. is not today offering his mother's home for placement of M.A.

Presentation of Father, E.W., Sr.

E.W., Sr. testified on September 10, 2009. He completed his testimony on September 18, 2009.

He has been incarcerated since October 16, 2002. He was released from incarceration on August 5, 2009. He is currently on Federal parole. He is 48 years old.

He lives at 523 Broadway Street, Scranton, Pennsylvania with A.B., the sister of Mother. Three children currently reside in the home which is a three-bedroom home. He is father of one of the children in the home, Elexis, age 8. Mother is the Mother of Elexis. E.W., Sr. testified that Elexis is doing well with him and that he immediately established a strong parental relationship with her.

E.W., Sr. testified that before he was incarcerated in 2002 that he was always there for his kids.

E.W., Sr. is not employed. He claims he was disabled in a car accident with a State Trooper in August 2002. He indicates he generally cannot work but can do some light duty type work. He claims his coordination has been severely affected by the vehicle accident.

He recently applied for Social Security disability benefits. He has also signed up for public assistance. He is participating in a program called Ticket to Work through Social Security.

E.W., Sr.'s long-term goal is to enroll in college at Lackawanna Junior College to obtain an associate degree in behavioral science, drugs and alcohol in 2010. He would like to eventually obtain employment where he works with troubled youth.

E.W., Sr. claims he has received a spiritual gift from God and that he is now a different person than he has been before.

He has been active in a local church, Providence United Presbyterian Church, since his release from prison. He has developed a relationship with the Reverend Dr. Mary Jane Hitt, Pastor of the Church, and she has written a reference letter for him, marked as E.W., Ex. 2. He also put into evidence as E.W., Ex. 1, a number of certificates of completion of various courses which he participated in while in prison. These courses include drug and alcohol, anger management, environmental agriculture, wellness, public speaking, breaking cycles, keys to loving family relationships, graphic design and blood borne pathogen training. E.W., Sr. also claimed he participated in a parenting class but he got out of prison before he received a certificate of completion.

E.W., Sr. does work opening and closing the Providence Church, and he has been embraced by the congregation of the Church. He refers to the Church as his family. He has involved his daughter, Elexis, in the Church. He has been open with the minister about his criminal past.

He testified he regrets his years badly spent in his youth with his involvement in crime. E.W. was age 3 when E.W., Sr. was last incarcerated.

After going to prison he maintained contact with Mother and E.W., but he acknowledges he started to lose contact with Mother and E.W. when E.W. was around five years old. Mother at this time went to Georgia. E.W., Sr. admitted in this timeframe he lost contact with the child for "a few years," until the Agency contacted him to inform him the child was in placement.

Eventually, E.W., Sr. learned that E.W. had been placed in foster care by the Agency when caseworker Melissa Dangle wrote him to inform him of the placement.

E.W., Sr. initially sent letters directly to E.W. at his foster home when he was with the Douglass family. Eventually, current caseworker Ed Frame advised E.W., Sr. to send letters through him which he would then provide to E.W. E.W., Sr. then sent his letters through Mr. Frame.

E.W., Sr.'s current source of income is public assistance and food stamps. He is hoping to eventually obtain Social Security disability benefits.

He referred to the home of A.B. as a last resort so he could be paroled from Leavenworth. He is on supervised release for three years. He reports to his Federal parole officer once a month. He is drug tested. If he cannot get Social Security disability, E.W., Sr. testified he will obtain light duty employment.

The rent for A.B. is \$665 a month. She is not employed at this time. E.W., Sr. does not contribute to the rent, but he pays for his own food. E.W., Sr. acknowledged that like him, A.B. has had drug and alcohol issues in the past.

E.W., Sr. was released from Leavenworth on August 5, 2009, because he had "good time" credit.

E.W., Sr.'s first involvement with the criminal justice system occurred when he was only six years old. He had numerous juvenile adjudications and at age 14 or 15 he testified he was certified into adult court for felony burglary offenses. His criminal history started in Lycoming County, but he moved to Pittsburgh and was convicted for theft and assault. He

served years in the Pennsylvania Correctional system. Subsequently, he got into the Federal criminal justice system for drug trafficking, cocaine and heroin.

E.W., Sr. has been incarcerated for most of E.W.'s life. E.W., Sr. claims he was the primary caretaker for E.W. until this child was age 3. He testified that Mother went to jail when the child was 4 months old. He also acknowledged that in this first three-year period of his son's life, he also went to jail for a seven-month period in November 2000 until June 2001. During this time relatives cared for E.W.

E.W., Sr. testified he sees himself in some of young E.W.'s ways.

On August 11, 2008, E.W., Sr. was released from the Leavenworth Institution to a halfway house in Harrisburg, Pennsylvania called Capitol Pavilion. If things worked out well at Capitol Pavilion E.W., Sr. could have been paroled in February 2009.

The Agency arranged for a visit between E.W., Sr. and his son at Capitol Pavilion.

Unfortunately, things did not go well for E.W., Sr. at Capitol Pavilion. He was there for approximately three months, but he called the federal marshals in November 2008 to return him to Leavenworth. He acknowledged he had many rule violations at Capitol Pavilion, but he felt the staff at Capitol Pavilion was corrupt and petty and that they were working against him. He agreed he had approximately nine rule violations. He became stressed out and did not want to deal with Capitol Pavilion any more. Thus, he returned to Leavenworth in November 2008 and was paroled from Leavenworth on August 5, 2009.

Mr. W. is now attending supervised visits at the Sharwell Building with E.W.

He will be starting counseling at the Scranton Counseling Center in October 2009. He testified the counseling will be for post traumatic stress disorder from his serious vehicle accident. He was diagnosed with post traumatic stress disorder by doctors at Leavenworth. Mr. W. testified he takes the drug Prozac once a day.

He acknowledged he was a “bad guy” at one time, but he claims he is not that guy any more. He calls this time now “a fresh start.” He feels M.B. is a capable mother. He strongly asserted in his testimony his love for his son and his desire to be a father to E.W. He feels E.W. has been acting out in foster homes because of his frustration in foster care, and he believes he can appropriately discipline his son if he resumes custody of E.W.

E.W., Sr. presented the Minister for the Providence Church, Mary Jane Asburn Hitt as a witness on October 9, 2009. She has known E.W., Sr. about two months since his release from Leavenworth. She sees him mostly on weekends at services. She also has telephone contact with him. She is counseling him on the need for an income stream and finding stable and long-term housing.

She has observed him with his daughter, Elexis, and she feels he is engaging in appropriate and solid parenting of her. She has no concerns about E.W., Sr.’s custody of Elexis. She feels Elexis is coming out of her shell when she is with her father. Minister Hitt acknowledged on cross-examination that her period of observation was not a long time in the overall scheme of things.

Colleen Miller testified on behalf of E.W., Sr. on October 9, 2009. Ms. Miller had known him previously but since he has been out of Leavenworth she has developed a significant relationship with him. She resides in Williamsport and is a former foster parent.

She has observed him with his daughter, Elexis, fifteen to twenty times. She describes him as a great father and she notes he handles her difficult behavior effectively.

Ms. Miller occasionally stays in Scranton with E.W., Sr. She also does some transportation of E.W., Sr. to this area for his visitations with E.W.

Ms. Miller has three children of her own and an adopted child and step-son.

Agencies' Rebuttal Testimony to E.W., Sr.'s Case and Mother's Case

In rebuttal the Agency called caseworker, Dixie Haldeman, who supervised visitation at the Sharwell Building. Ms. Haldeman supervised E.W., Sr.'s and Mother's visitations during August, September, and October 2009.

She testified that Mother visited with the children at the Sharwell Building on August 19, 2009, September 3, 2009 and September 17, 2009. She was scheduled to visit on September 30, 2009, but she called off sick. On the August 19, 2009 visit Ms. Haldeman requested that Mother not discuss the ongoing termination proceedings with E.W. because she felt this would upset him. Mother ignored the request and talked to the child about the termination proceeding. Mother also became angry when the Agency worker asked her to "stop playing dodge ball" with the two children because M.A. was only three years old.

On September 3, 2009, Mother became angry with M.A. when she asked him where his home was, and he responded with the home of his foster mother. Mother then became argumentative with the caseworker. This also tended to get E.W. involved in the argument.

E.W., Sr. had a scheduled visit with E.W. to start after Mother's visit. At the end of E.W., Sr.'s visit Mother waited outside the Sharwell Building with her mother and

E.W., Sr. The caseworker, Ms. Haldeman was about to take E.W. out of the Sharwell Building to return him to his foster parents. When she saw the natural parents and M.B.'s mother right outside the door she diverted E.W. to another door. When the parents and maternal grandmother realized E.W. was not going to come out the door they became extremely agitated and began yelling and cursing at Ms. Haldeman. She became fearful and did not go outside. The three were very close to the door and this conduct occurred in front of E.W. Ms. Haldeman described Mother's and E.W., Sr.'s conduct as angry and threatening. As a result of this incident the Agency has additional staff present when the parents exercise visitation.

Generally, when Ms. Haldeman makes suggestions to Mother at the visitations about the child, Mother responds that these are her children, and she will do what she wants.

Ms. Haldeman also described E.W. Sr.'s visits with E.W. At the first visit on August 19, 2009 she had to coax E.W. to greet E.W., Sr. E.W. seemed quiet and reserved. E.W., Sr. showed the child pictures of his family and Mother's family. E.W., Sr. had some problem accepting redirection from the caseworker and he tended to be somewhat argumentative with the caseworker. He spent most of the visit talking to E.W., and the child was very quiet and did not say much in return. The child also tended to avoid eye contact. The caseworker testified this also held true for the next three visits.

On the September 3, 2009 visit the child seemed reluctant to respond to E.W., Sr.'s questions. Family photos were again shown to him. The caseworker felt the child appeared to be stressed. The caseworker thus suggested that E.W., Sr. play some board games with the child. The caseworker described the child as being very quiet and that he would put

his head down. September 3, 2009 also is the date where the aforementioned incident occurred when the child was leaving the Sharwell Building.

Ms. Haldeman described E.W., Sr.'s September 24, 2009 visit as being somewhat better. E.W., Sr. did most of the talking but he talked to the child about his behavior in foster homes and stressed the need for the child to respect people who were not in his family. The witness testified the child does not respond much verbally to E.W., Sr.

Ms. Haldeman testified the October 8, 2009 visit was similar to the others. The child did not have much verbal interaction with E.W., Sr. However, Mr. Haldeman felt the child seemed a bit more comfortable during the October visit.

Ms. Haldeman described M.A. as being reluctant to leave his foster mother when he comes to visit with Mother. Toward the end of his visits he looks for his foster mother.

E.W. seems glad to see Mother when she comes for visits. At the end of the visits he hugs her but has no problem leaving her company.

She described E.W.'s reaction to E.W., Sr. as showing some reluctance and reclusiveness often putting his head down. Typically, E.W., Sr. initiates contact by telling E.W. to come over and give him a hug.

Surrebuttal on Behalf of Mr. W.

E.W., Sr. retook the witness stand in surrebuttal. He testified E.W. smiles and laughs during visitations. He opined the child's reluctant affect is more of a macho thing as he greets other people similarly. He feels people sometimes misread E.W.'s body language.

He acknowledged M.B. and her mother united with him at the entrance to the Sharwell Building on September 3, 2009 after the visit, but he denied that any of them yelled at Ms. Haldeman or disrespected her in any way.

He has requested that the Agency give him more visitation time with E.W.

Rebuttal to Surrebuttal by Agency

The Agency recalled Melissa Harris as a witness in response to E.W., Sr. Ms. Harris, the foster mother for M.A., was present after the September 3, 2009 visits at the Sharwell Building. She was in the parking lot outside the entrance door and she was getting M.A. into her vehicle.

Her attention was drawn to the building entrance. She noticed Mother was near the door and was very upset. All three of the individuals there, Mother, E.W., Sr. and the child's grandmother were very angry and were yelling to "let him come up." All three were using profanity. She heard a man's voice clearly so she was sure E.W., Sr. was also doing this. Ms. Harris could also see Ms. Haldeman inside the door. Her attention was drawn to the incident because of the loud tones of voices being used by the three parties.

In-Chambers Interview of E.W., Jr.

On the June 11, 2009, the Court interviewed E.W., Jr. in chambers. The interview was done on the record but was in the Court's chambers with only counsel present.

The Court instructed counsel to not directly question E.W., Jr. about his preference as to what the outcome of the termination hearing should be. It had been reported to the Court by the Guardian Ad Litem and has been confirmed in Agency testimony that this termination proceeding is causing much stress on E.W., Jr.

The Court conducted the interview because we felt it would be beneficial to the Court to meet the child and get some feeling for his personality. The Court also felt that ultimately it would be good for the child to talk with the Court so he would at least feel like he had some voice in the proceeding.

E.W., Jr. talked to the Court about the fact he was in the fifth grade at school. He described his foster family and the people in the family including the children. He described living with his Aunt and Uncle, Rhonda and Derrick, for a three-month period.

E.W., Jr. indicated he sees his Mother every two weeks. At that time, he last saw his father when he visited him at the halfway house in Harrisburg.

Although not directly asked, E.W., Jr. did tell the Court that he would like to live with his Mother.

E.W., Jr. is athletic, and he talked about how he likes professional baseball.

The parties also stipulated that when E.W., Jr. recently talked to his father on the telephone he told his father he loves him.

The Court observed E.W., Jr. to be a handsome, personable and likable young man.

Discussion

In order to involuntarily terminate parental rights the party seeking termination must prove by clear and convincing evidence the grounds for termination. *See, Santosky v. Kramer*, 455 U.S. 745, 102 Sct. 1388 (1982); *In Re: Adoption J.D.P.*, 471 A.2d 894, 895 (Pa. Super. 1984).

The Agency seeks to terminate the parental rights of Mother, M.B. to two children, E.W., Jr., age 10 and M.A., age 4. The Agency seeks to terminate the parental rights of Father, E.W., Sr. to E.W., Jr., and Father, S.A., to M.A.

The Agency argues termination of the parental rights is proper under the following subsections of 23 Pa. C.S.A. 2511:

(a) GENERAL RULE.-- The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failed to perform parental duties.

(2) The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well-being and the conditions and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

(8) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency, 12 months or more have elapsed from the date of removal or placement, the conditions which led to the removal or placement of the child continue to exist and termination of parental rights would best serve the needs and welfare of the child.

(b) OTHER CONSIDERATIONS.-- The court in terminating the rights of a parent shall give primary consideration to the developmental, physical and emotional needs and welfare of the child. The rights of a parent shall not be

terminated solely on the basis of environmental factors such as inadequate housing, furnishings, income, clothing and medical care if found to be beyond the control of the parent. With respect to any petition filed pursuant to subsection (a)(1), (6) or (8), the court shall not consider any efforts by the parent to remedy the conditions described therein which are first initiated subsequent to the giving of notice of the filing of the petition.

23 Pa. C.S. §2511.

The statute permitting the termination of parental rights outlines certain irreducible minimum requirements of care that parents must provide for their children and a parent who cannot or will not meet the requirements within a reasonable time following intervention by the state may properly be considered unfit and may properly have his or her rights terminated. *In Re: K.L.S.*, 946 A.2d 753 (Pa. Super 2008); *In Re: B.L.L.*, 787 A.2d 1007, (Pa. Super 2001).

The court will discuss each parent separately.

Mother, M.B.

For a period of years since her children were found to be dependent Mother has failed to make any appreciable or consistent progress to resume her role as a parent to her children. She appeared at several of the evidentiary hearings in this termination case, but she walked out of the Courtroom in the middle of the first hearing held on May 7, 2009, claiming she had a private attorney and that the Public Defender should not represent her. She failed to appear completely at the hearing held on September 18, 2009. She did appear at the hearing held on August 27, 2009, and she testified at that hearing.

She has appeared for visitation sporadically for the children and she has completely disappeared for several long stretches of time. She did not see the children in the timeframe from September 2008 until January 2009.

She refuses to cooperate with the Agency and she acknowledged in her testimony this reality indicating she does not trust them.

She has neither employment nor long-term stable housing.

She has had a significant drug problem with cocaine for many years and has used cocaine as recently as the timeframe of the birth of her new baby in April 2009. The new baby was born with cocaine in his system. She has made no significant effort to engage in drug treatment or counseling.

There is no reason to believe that she will soon remedy the reasons which led to the placement of her children. She has made little progress since 2005 when the Agency first had involvement with her case.

While she has some bond with E.W., Jr., because of his age and having intermittent contact with him over the years, the Court does not believe it is a deep bond because M.B. has not served in a meaningful role as a mother for many years. The Court believes E.W., Jr. would not suffer any deep or lasting negative impact if Mother's parental rights are terminated. The Court also believes E.W., Jr., could readily bond with an adoptive parent if he is placed in a loving family.

Mother has no bond with her younger child, M.A. M.A. is clearly bonded to his foster mother, Melissa Harris, who has had M.A. since October 2008 when he was three years old. The Court also credits Mr. Harris' testimony that after M.A. visits with Mother at the Sharwell Building his behavior reverts to wetting his pants and sucking his thumb.

If Ms. Harris is allowed to adopt M.A., the child will have no real adjustment difficulty in not having contact with Mother. If the child was taken out of the foster home with Ms. Harris, the Court believes he would suffer because of his bond with Ms. Harris.

While the Court felt Mother seemed sincere in her testimony about her love for the children, there is no question in the Court's mind that termination of her parental rights to the children is required to allow the children to find a stable and loving family life. The Court believes termination of Mother's parental rights to E.W., Jr. and M.A. is justified under 23 Pa. C.S.A. §2511(a)(1), (2), (5) and (8) and (b).

Father, S.A.

The Court believes the Agency has met its burden of proof to terminate the parental rights of S.A. to M.A.

Unquestionably S.A. has no bond whatsoever with M.A. He has only seen him once in a supervised visit at the Sharwell Building after the Agency filed its termination petition.

S.A. met Mother when she was visiting in Georgia. He noted Mother lived with him for a while but he could not remember the year. He was aware Mother was pregnant with his child but he let her leave Georgia and return to Pennsylvania before the birth of the child. He then lost contact with Mother. He was eventually contacted by the Agency almost two years later when he was told the child was in placement in September 2007.

In the first three years of M.A.'s life S.A. did nothing to locate him or participate in his life in any manner. S.A. has not sent any cards or gifts to the child since the

child has been in Agency custody. When S.A. was asked in his testimony if he had any special plan as to reuniting with M.A. he indicated he does not.

When he was questioned about why he did not make efforts to see his child after Mother left Georgia, S.A. in essence stated that he wanted to obtain some financial stability by employment before he would try to make contact with his child. Even after the child was placed in Agency custody S.A. did not visit with the child despite the fact that the Agency offered him financial assistance to come to Pennsylvania. While S.A. is now paying child support this is only through the efforts of the Agency and is not something initiated by S.A.

As previously discussed, M.A. is now fully bonded with his foster mother, Melissa Harris. Ms. Harris wants to adopt the child. It does not make sense to delay adoption to a loving home waiting for this child to give the natural father more time to see if he will become a meaningful factor in the child's life.

The Court also does not believe that S.A., who has two young children in his home, is really in a position to effectively parent this young child. Thus, the Court finds the Agency has met its burden of proof to terminate the parental rights of S.A. to M.A.

In regard to S.A., the Court notes that a parent's rights to a child may not be preserved by waiting for a more opportune time to obtain better financial abilities to perform parental duties and responsibilities. *See, In Re: D.J.S.*, 737 A.2d 283, 287 (Pa. Super. 1999). It is abundantly clear that the best interest of M.A. demand Ms. Harris, who has served as the real parent for over a year, be able to adopt him. Not allowing this to happen would in actuality be cruel treatment of this now 4-year-old child. The child has no bond with either

natural parent. The Court believes that termination of S.A.'s parental rights to the child, M.A. is justified under 25 Pa. C.S.A. §2511(a)(1) and (2) and (b).

Father, E.W., Sr.

The Court finds the issue of termination concerning E.W., Sr. to be the most difficult issue presented by this case.

The Court finds that the Agency has proven a basis for termination under both 23 Pa. C.S.A. §2511(a)(1) and (2) and (b). Because of the difficulty of this issue the Court will discuss its findings on each basis separately.

2511(a)(1)

This section requires the following to be proven for termination of parental rights. The Agency must prove:

- (1) The parent by conduct continuing for a period of at least six months immediately preceding the filing of the petition either has evidenced a settled purpose of relinquishing parental claim to a child or has refused or failure to perform parental duties.

The six-month period pertinent to subsection (1) would be from August 18, 2008 to February 18, 2009, when the Agency filed the termination petition. The Court obviously has also considered, as can be seen in the actual development in this opinion, the prior history of the child and the post-petition evidence heard by the Court.

Parental rights under §2511(a)(1) may be terminated if the parent either demonstrates a settled purpose of relinquishing a parental claim to a child or fails to perform parental duties. *See, In Re: DJS*, 737 A.2d 283 (Pa. Super 1999). The Court does not believe E.W., Sr. has demonstrated a settled purpose of relinquishing his parental claim to E.W., Jr. However, the Court finds the evidence establishes in a clear and convincing manner that in the

pertinent six-month timeframe (August 18-2008-February 18, 2009) E.W., Sr. has failed to perform parental duties.

E.W., Sr. was released from Leavenworth Penitentiary and returned to a halfway house in Pennsylvania on August 11, 2008. He had last seen his child in October 2002, when the child was 3 years old. He then lost contact with the child until the child was placed with the Agency. When he visited with E.W., Jr., on October 11, 2008 in Harrisburg, the child was 9 years old. However, by November 17, 2008, E.W., Sr. committed 9 rule infractions at the halfway house, and he then voluntarily returned to Leavenworth Penitentiary instead of trying to resolve his situation in Harrisburg. When back at Leavenworth, E.W., Sr. failed to send a Christmas card to his son, but he did resume his monthly letters to E.W., Jr.

In failing to stay in a situation where he could maintain actual contact with his son the Court can only conclude that E.W., Sr. failed to perform the most important of parental duties - being there for his son. The Agency thus went forward with their termination petition in February 2009.

§2511(a)(2)

The Court also believes the Agency has proven the applicability of §2511(a)(2) which states parental rights may be terminated when:

The repeated and continued incapacity, abuse, neglect or refusal of the parent has caused the child to be without essential parental care, control or subsistence necessary for his physical or mental well being and the condition and causes of the incapacity, abuse, neglect or refusal cannot or will not be remedied by the parent.

E.W., Jr., unfortunately, has been without essential parental care or control since at least November 2005 when the child was found to be dependent. The child has been in kinship placement or foster placement since shortly after that timeframe.

E.W., Sr. has been out of the picture permanently in a long-term incarceration since October 2002. E.W., Sr. acknowledged in his testimony that even in the first 3 years of the child's life before the long-term incarceration, he was incarcerated for over half a year from November 2000 to June 2001. He had no contact with the child, even by letter, for several years after going into prison. Obviously, E.W., Sr. must take responsibility for his criminal conduct and he is at fault for this absence from his child's life.

The more difficult question is posed by the latter portion of §2511(a)(2) which requires a finding that:

The conditions and causes of the incapacity, abuse, neglect, or refusal cannot or will not be remedied by the parent.

E.W., Sr. is now finally out of prison as of August 5, 2009. He is on Federal parole. He is making some positive strides. His association with the Providence Church is a good thing. His housing, income and employment are still uncertain. He is presently living with A.B., sister of Mother. A.B. has an open case with C&Y in Luzerne County. When Mother took E.W., Jr. out of the kinship placement and fled to Luzerne County in January 2007 she lived with her sister, A.B., the person with whom E.W., Sr. is now residing.

The Court cannot say with any certainty whether E.W., Sr. can change the criminal lifestyle pattern he has been involved in for close to 30 years. The Court is hopeful this will finally be the time when he can change. The Court does not want to damn him by saying he cannot change. The Court also believes he loves his son.

However, there are some concerning factors. The Court believes E.W., Sr. still has some problems with structure, rules and authority. As recently as November 2008, he left the halfway house at Capitol Pavilion because he could not abide by their rules.

E.W., Sr. does not easily follow directions from the caseworkers at the supervised visits at the Sharwell Building. He still believes Mother is an appropriate caregiver for the child, and he seems very connected with her family, as is evidenced by him living with A.B.

The incident after the September 3rd visitation when both E.W., Sr. and Mother waited outside the Sharwell Building and screamed and cursed at the supervision caseworker when she did not let E.W., Jr. come out the door highlights these concerns.⁶

The Court also believes that the incapacity will take a significant time to resolve as E.W., Sr. has only been out of jail a few months after numerous years of incarceration. Mr. Frame, the caseworker, who has been helpful to E.W., Sr., estimated at least a year before E.W., Sr. potentially reaches a stabilization point where he could assume a true parenting role with the child. There is also the possibility E.W., Sr. will not reach this point based on his past history.

Our appellate courts, in considering what they have referred to as post-abandonment conduct have said:

To be legally significant, the post abandonment contact must be steady and consistent over a period of time, contribute to the psychological health of the child, and must demonstrate a serious

⁶ E.W., Sr., under oath denied this conduct on September 3rd both as to himself and M.B. His testimony was clearly contradicted by the caseworker, Dixie Haldeman, and an eyewitness, Melissa Harris. The court on this credibility issue believes the testimony of Ms. Haldeman and Ms. Harris. The conduct in question is disturbing and raises concerns about future cooperation.

intent on the part of the parent to re-cultivate a parent-child relationship and must also demonstrate a willingness and capacity to undertake the parental role. The parent wishing to reestablish his parental responsibilities bears the burden of proof on this question.

In Re: DJS, supra, at 286.

Case law is also clear that, in cases concerning an incarcerated parent, a parent's right to custody and rearing of a child is converted upon failure to fulfill parental responsibilities to the child's right to have proper parenting in a permanent, healthy and safe environment. For example, in *In Re: Adoption of C.L.G.*, 956 A.2d 999, 1006 (Pa. Super. 2008) at the time of the child's birth both the child and mother tested positive for cocaine. Mother was also on bail at the time for crimes involving drugs and child endangerment. The child was found to be dependent and Mother was given weekly supervised visits and drug and alcohol counseling. Mother at this time did extremely well and began to fulfill the objectives in the family service plan. It was expected that mother would reunite with her child. Thereafter Mother entered an open guilty plea on the criminal charges. She was sentenced to a term of incarceration of 2-5 years. The Agency, five months later, filed a petition to terminate mother's parental rights. The trial court granted termination. The mother at that time was in a halfway house in preparation for her release.

Mother argued that the trial court erred in granting termination because the uncontroverted evidence at trial showed that the issues which lead to her placement no longer existed. She also cited her progress while incarcerated. Mother argued her parental rights were being terminated solely based on her incarceration.

The Superior Court denied mother's appeal of the termination. The Superior Court noted that the trial court was not bound to accept mother's assurances that she would adequately care for her child. The Superior Court went on to say:

Furthermore, if we were to permit mother further opportunity to cultivate an environment where she can care for C.L.G., we would be subjecting a child, who has been waiting for more than two years for permanency, to a state of proverbial limbo in anticipation of a scenario that is speculative at best. While it appears that Mother has managed to remain drug-free in the confines of incarceration, whether she can maintain that status among the external pressures of the outside world remains to be proven. One can only speculate as to what the future conditions of Mother's release from incarceration will entail and how soon she would be permitted to have supervised visits, let alone overnight visitation or full custodial care of the child she has never parented.

Id. at 1008.

Similarly, in *In Re: S.H.*, 879 A.2d 802 (Pa. Super. 2005) concerning termination of a mother's parental rights to an 8-year old child, mother was serving a 2-4 year sentence in prison. While she was making progress in her role to become a parent, the court found it would be another 1-2 years before the child could be returned to her custody. The court noted the child's needs for permanency and stability supported affirming termination.

More recently, the Superior Court stated:

Unlike subsection (a) (1), subsection (a) (2) does not emphasize a parent's refusal or failure to perform parental duties, but instead emphasizes the child's present and future need for "essential parental care, control or subsistence necessary for his physical or mental well-being."

In Re: E.A.P., 944 A.2d 79, 82 (Pa. Super. 2008).

It should also be noted that the Adoption and Safe Families Act of 1997 (ASFA) P.L. 105-89 1997 HR 867 (Nov. 19. 1997), 42 U.S.C. §671-675, imposes on the States the

requirement to focus on a child's need for permanency rather than the parent's actions and inactions.

While E.W., Sr. seems sincere in his desire to create a home for his son, the court does not know what the future will hold for him. It seems to the Court that this timeframe may be the last best chance for this young 10-years child to be adopted into a stable and loving two-parent family environment.

The Court thus believes the Agency has proven the applicability of both §2511(a)(1) and (2).

Discussion of §2511(b) in Regard to the Best Interest and Welfare of the Children

Since the Court has found that the Agency has proven a basis for termination of parental rights, the Court is required to go on and consider whether the evidence clearly and convincingly proves the requisite requirements of §2511(b) before granting termination of parental rights.

Subsection (b) requires the Court to separately examine “the developmental, physical and emotional needs and welfare of the child” in regard to whether termination of parental rights should be granted.

The Court believes E.W., Jr. has some bond with Mother; however, since the child has been in kinship or foster care for many years the Court does not believe that this bond could now be considered a maternal bond. Although E.W., Jr. expressed a preference to live with M.B. and seems to enjoy seeing her when she comes to visitation, he has no trouble leaving visitations and does not appear to show longing or missing of her between visitations.

Psychologist Bruce Anderson, who evaluated E.W., Jr. opined that if parental rights are terminated E.W., Jr. would feel some sadness and even anger but that he would be able to work through these feelings because he has been without his parents most of his life.

Mr. Anderson described E.W., Jr.'s bond with his father as being more in his mind than real because his father has been in jail most of his life. He does not believe there is an actual parental bond with him.

Evidence presented by caseworker Dixie Haldeman, who has supervised Father's visits with E.W., Jr., at the Sharwell Building, would seem to confirm this. The child does not talk much with Father and keeps his head down in much of the conversation from Father to him. He seems reluctant to greet Father at the visitations and seems to have some shyness with him. While this may be understandable because Father has been away so long in prison, it also indicates there is not a strong parental bond.

Most important, the psychologist testified to E.W., Jr.'s immediate need for stability and a permanent home. The psychologist, as did a number of other witnesses, testified that E.W., Jr. is adoptable.

Mr. Anderson also cautions that not allowing the child to be adopted to a loving family continues to leave the child in limbo. Mr. Anderson does not believe that it would benefit E.W. Jr. to stop the potential adoption process to wait and see if E.W., Sr. can eventually obtain true parental stability.

The Court believes, that unfortunately, E.W., Jr. has been allowed to languish in foster care for far too long a time. The Court believes Judge Dudley Anderson was correct in his earlier order of April 8, 2008, Agency E.W. Exhibit 8a, when he warned E.W., Jr. was

languishing in foster care and Judge Anderson expressed concern with the Agency's continued goal of reunification with the parents. Judge Anderson noted in a September 3, 2008, Order,

Ex. 8a:

It should be noted that the Court does not completely share the Agency's enthusiasm with regard to the planned reunification of these boys with their fathers. . . . The Agency's faith in reunification appears to be based on several phone calls to these perspective fathers and the court is concerned about the ability of these gentlemen under these circumstances to assume custody and responsibility of E.W., Jr. and M.A. . . . It seems to the undersigned that to displace these boys from their present home in the name of biology is risky at best.

This Court believes the best interest and welfare of the children is best fulfilled by termination of parental rights and adoption of the children into loving and stable homes.

The issue of parent-child bond as to the younger child, M.A., who has just turned age 4, is simpler than with E.W., Jr. M.A. has no bond at all with S.A. He has only met him one time in his short life during a supervised visit at the pretrial conference for this case.

M.A. has little or no bond with Mother. The testimony of the child's reactions to Mother at the visitations clearly indicates the lack of bond. This child considers Melissa Harris, his foster mother, to be his mother. Ms. Harris now wants to adopt M.A. and be his permanent mother. Any decision to remove or interfere with this relationship would not be in the best interest of the child.

The Court thus finds that the requirements of §2511(b) are clearly satisfied by termination in this case.

Accordingly, the Court will enter separate orders granting the Agency's
Petitions for Termination of Parental Rights.

BY THE COURT,

Kenneth D. Brown, Judge

cc: Mark Taylor, Esquire
John Petrovito, Esquire
Stephanie Lombardo, Esquire
Joel McDermott, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File